

Decision 05-02-003 February 10, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Valencia Water Company (U34-W) seeking approval of its updated Water Management Program as ordered in Commission Resolution W-4154 dated August 5, 1999.

Application 99-12-025  
(Filed December 17, 1999)

**OPINION ON SECOND REQUEST  
FOR INTERVENOR COMPENSATION**

This decision awards the Angeles Chapter of the Sierra Club (Sierra Club) \$4,074.18 for its work on Decision (D.) 03-10-063 insofar as it assisted the Commission in deciding to stay the portion of D.01-11-048 relating to the West Creek Environmental Impact Report (EIR). Also included is an amount related to Sierra Club's first request for compensation; this amount was not included in the compensation award in D.03-01-058. (See Section VII.C below.)

**I. Procedural Summary**

On February 23, 2004, Sierra Club filed its second request for compensation in this proceeding. Valencia filed its opposition to Sierra Club's request on March 23, 2004. Sierra Club filed its reply on April 7, 2004. Thereafter, on April 28, 2004, Sierra Club filed a document captioned Supplemental Authority in Support of Sierra Club's Request for Compensation. Valencia replied on May 12, 2004, and this matter was submitted for decision.

## **II. Background**

In D.01-11-048, the Commission approved Valencia's 1999 Water Management Program (WMP) and Advice Letters (ALs) 88 and 90, requesting permission to expand its service area. D.01-11-048 rejected County of Ventura's (Ventura) and Sierra Club's contention that the Commission should assume the role of lead agency and issue an EIR on the WMP and all water supplies shown as available in the WMP before the Commission addresses ALs 88 and 90. The Commission's approval of ALs 88 and 90 authorized Valencia to provide water service to the North Valencia 2, Mountain View, West Creek and Tesoro del Valle development projects.

The EIRs<sup>1</sup> for these four development projects were previously certified by either Los Angeles County or the City of Santa Clarita acting as lead agency pursuant to California Environmental Quality Act (CEQA). Therefore, the Commission decided that it was unnecessary to duplicate the EIRs that had already been conducted by local lead agencies, and determined that the Commission's proper role on the "project" was as a responsible agency. After considering the WMP in conjunction with ALs 88 and 90, the Commission concluded that the WMP's demonstration of available water supplies gave a sufficient margin of safety to allow Valencia to serve new customers as delineated in ALs 88 and 90.

In D.03-10-063, the Commission denied Sierra Club's application for rehearing of D.03-06-033, where the Commission denied Sierra Club's petition for modification of D.01-11-048. However, the Commission, on its own motion,

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<sup>1</sup> Actually there were three EIRs and one mitigated declaration, but all four are hereafter collectively referred to as "EIRs."

stayed the portion of D.01-11-048 that approved the West Creek EIR pending recertification of the West Creek EIR by Los Angeles County, the lead agency. While the Commission denied Sierra Club's application for rehearing because Sierra Club was not able to point to any legal error in the earlier decision denying modification, the Commission partially granted the relief Sierra Club sought based on information that Sierra Club provided the Commission in its late-filed comments and in its application for rehearing.

### **III. First Request for Intervenor Compensation**

Sierra Club was granted intervenor compensation in the amount of \$46,990.96 for its work on both the interim opinion in this proceeding, D.00-10-049,<sup>2</sup> and on D.01-11-048, the decision granting Valencia expansion of its service territory. Sierra Club claimed that its work on the interim opinion was compensable because it helped the Commission to direct Valencia to comply with CEQA requirements for environmental review. The Commission held that because Ventura preceded Sierra Club in raising identical issues concerning CEQA, only Sierra Club's cross-examination on those issues during evidentiary hearings resulted in a substantial contribution by supplementing or complementing Ventura's position. Therefore, the Commission reduced the hours for the time that did not result in a substantial contribution to the interim opinion.

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<sup>2</sup> In D.00-10-049, the Commission concluded that Valencia's 1999 WMP, in conjunction with ALs 88 and 90, is a project requiring CEQA review. The Commission directed Valencia to address CEQA review of both its WMP and ALs 88 and 90 in this proceeding. In D.01-11-048, the Commission approved Valencia's 1999 WMP and ALs 88 and 90 authorizing expansion of its service area.

With respect to intervenor compensation for its contribution to D.01-11-048, Sierra Club claimed that its participation on the issue of potential cumulative watershed effects regarding the proposal by Newhall Land (Valencia's parent corporation) to construct a large residential development resulted in the Commission ruling that its approval of Valencia's WMP did not authorize extension of water service to Newhall Ranch. The Commission found that Sierra Club substantially contributed to this issue. The Commission also found that Sierra Club "raised several issues during the consideration of the WMP on which it did not prevail. However, the issues raised were useful to the Commission's consideration of the WMP and resulted in a more informed decision by the Commission. Therefore, all of Sierra Club's time associated with the hearings and briefings leading to D.01-11-048 made a substantial contribution." (D.03-01-058, p. 5.)

#### **IV. Second Request for Compensation**

On February 23, 2004, Sierra Club filed a second request for compensation, which is at issue here. In its second request, Sierra Club seeks to recover intervenor compensation for the following contributions: (1) its work on two Petitions for Writ of Review before the California Supreme Court [the First Petition sought judicial review of D.01-11-048, and the Second Petition sought judicial review of D.01-11-048, and D.03-06-033; the Court summarily denied both petitions]; (2) Sierra Club's work on its application for rehearing of D.03-10-063; (3) its work regarding the Decision Denying Sierra Club's Petition for Modification, i.e., D.03-06-033; (4) its work regarding the Decision Approving the WMP, i.e., D.01-11-048, and its application for rehearing of D.01-11-048; and (5) its work in preparing its first request for compensation.

## **V. Requirements for Awards of Compensation**

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following requirements must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.  
(§ 1806.)

## **VI. Timeliness**

Section 1804(c) provides that:

“(c) Following issuance of a final order or decision by the commission in the hearing or proceeding, a customer who has been found, pursuant to subdivision (b), to be eligible for an award of compensation may file within 60 days a request for an award. . . .”

On December 22, 2003, the California Supreme Court mailed its Order Denying Sierra Club’s Second Petition for Review. Sierra Club filed its second request for compensation on February 23, 2004, which is the 63<sup>rd</sup> day after the Court’s denial. Although the statute refers to a final Commission order, it is reasonable to treat D.03-10-063 as becoming “final” for purposes of the statute on the date when Sierra Club exhausted its avenues for judicial review. Even then, Sierra Club does not meet the 60-day requirement; however, rather than reject Sierra Club’s entire compensation request, we will overlook the lack of timeliness and address the request on the merits.

Sierra Club has satisfied requirements 1, 2, and 4, as described in D.03-01-058, where we dealt with Sierra Club’s first compensation request. The remaining requirements are discussed below.

## **VII. Substantial Contribution**

The primary issue before us is whether Sierra Club is entitled to compensation for its unsuccessful appeals to the California Supreme Court. The short answer is that a substantial contribution to a Commission order or decision does not always entitle the party to compensation for its costs of obtaining judicial review of that decision. Rather, the judicial review efforts must relate to or be necessary for the substantial contribution; further, the efforts are compensable only to the extent that the costs incurred are reasonable. In this

instance, we deny Sierra Club's claim (as it relates to judicial review costs) for the reasons discussed below. We do award compensation for certain other work, as noted.

Sierra Club argues that it is entitled to compensation for its time expended in seeking judicial review because the Commission did not respond within 60 days to Sierra Club's application for rehearing of D.01-11-048 and its subsequent petition for modification of D.01-11-048. Sierra Club argues that although its petitions for review to the Court were denied, they assisted this Commission in ultimately deciding the issues presented. According to Sierra Club, its second petition for review, for example, prompted the Commission to issue D.03-10-063, its Order Staying Decision 01-11-048, in Part, and Denying Rehearing of Decision 03-06-003. Sierra Club believes that because D.03-10-063 mooted many of the issues raised in its second petition for review, the Court denied the latter petition.

As the basis for its request for compensation, Sierra Club relies on the decision of the California Court of Appeal for the Second District in *Southern California Edison Co. v. Public Utilities Commission (The Utility Reform Network [TURN], real party in interest)*, 117 Cal. App. 4<sup>th</sup> 1039 (2004 Daily Journal Daily Appellate Report 4827, April 24, 2004). Sierra Club asserts that the court's holding in *Southern California Edison* was that an intervenor organization representing utility customers was entitled to recover compensation for its filings in a related federal district court proceeding "regardless whether such work made a 'substantial contribution' to the PUC decisions for which compensation was sought." (Sierra Club Submission, at 1, citing *Southern California Edison*, at 4831.) Sierra Club quotes the court's further statement that "once a customer makes [a substantial] contribution to a PUC proceeding, that customer may



obtain compensation for the fees and costs of obtaining judicial review, regardless whether that judicial review work made a substantial contribution to the PUC proceeding.” (*Id.*)

Sierra Club misconstrues the California Court of Appeal’s holding in *Southern California Edison*. While Sierra Club accurately quotes portions of the decision, the discussion to which Sierra Club refers does not mean that an intervenor in Sierra Club’s position, having made a substantial contribution to a Commission decision, will be entitled to compensation for its costs of obtaining judicial review regarding matters in that decision unrelated to or unnecessary for the substantial contribution. This point can be illustrated by considering the actual circumstances involved in *Southern California Edison*.

In the *Southern California Edison* case, TURN had intervened in a federal court proceeding to defend the Commission’s jurisdiction, which was being challenged. The federal court upheld the Commission’s jurisdiction, thus preserving the Commission’s ability to decide certain ratemaking matters, and TURN made substantial contributions to the Commission’s decision on those matters. When TURN sought intervenor compensation, it requested its costs of litigation both before the Commission and in federal court. The Commission concluded that TURN’s federal court work was compensable as work associated with obtaining judicial review pursuant to Section 1802(a). The Commission stated that if an intervenor cannot gain compensation to **defend** a Commission decision in which the intervenor prevailed, the intervenor’s effectiveness will be severely limited. The Commission interpreted the “judicial review” language of Section 1802(a) as providing for compensation not just when an intervenor initiates and successfully pursues judicial review to challenge a Commission decision, “but also when the intervenor successfully defends a Commission

decision against a challenge.” (*Southern California Edison, supra*, at 4829.) The utility then challenged the Commission’s award insofar as it compensated TURN for TURN’s costs in federal court.

Applying the traditional standard of review, that the Commission’s interpretation of the Public Utilities Code “should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language,” the California Court of Appeal concluded that it could not say that the Commission’s construction of Section 1802(a) bore no “reasonable relation to statutory purposes and language,” because TURN did in fact obtain judicial review and the Commission’s construction of the statutory language was consistent with the statutory purposes. (*Southern California Edison, supra*, at 4830.)

In addition, the California Court of Appeal rejected claims by the utility that TURN’s federal court work was not compensable because it was performed after the Commission issued its decisions to which TURN claimed to have contributed, so the federal court work could not have made a “substantial contribution” to those decisions. Noting that judicial review virtually always occurs after the Commission has issued its decision, the California Court of Appeal observed that once a customer has made a substantial contribution to a Commission proceeding, the customer may be compensated for costs of judicial review, regardless of whether the judicial review work “made a substantial contribution to the PUC proceeding.” The California Court of Appeal affirmed the Commission’s statutory interpretation that “the work before the reviewing court must be related to or necessary for the substantial contribution made in the Commission decision for which compensation is sought.” (D.03-04-034, slip op. at p. 5.)

To summarize, in *Southern California Edison*, the California Court of Appeal upheld the Commission's decision to compensate TURN for its work in aiding the successful defense of the Commission's jurisdiction to render a decision to which TURN had contributed. However, *Southern California Edison* is no precedent for compensating Sierra Club in these circumstances for its effort to obtain judicial review to overturn a Commission decision. Here, obtaining judicial review was not necessary for the substantial contributions by Sierra Club that we have found in this proceeding. For reasons which we discuss below, Sierra Club's judicial review efforts were also unrelated to its substantial contributions in this proceeding.

In evaluating whether a customer made a substantial contribution to a decision, we find guidance in the statute. First, did the Administrative Law Judge (ALJ) or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, did the customer's participation materially supplement, complement, or contribute to the presentation of another party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it

contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>3</sup>

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<sup>3</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

Sierra Club has already received compensation for over 80% of its attorney time and expenses up to and including the submission of post-hearing briefs in August 2001 (see D.03-01-058, slip op. at pp. 6-8). Sierra Club now seeks additional compensation for virtually all its attorney time and expenses from September 2002 through the present – including the participation of its attorney not only in this proceeding but also in the efforts to obtain review of this Commission’s decisions, on two separate occasions, by the Court.

While Sierra Club provides a narrative description of its efforts, it mostly fails to identify in what respects these activities contributed substantially to any Commission decision. These activities, described at pages 3-8 of Sierra Club’s request, are summarized below, together with the Commission’s response:

- Sierra Club filed an application for rehearing of D.01-11-048 request for stay, and request for oral argument in December 2001. The Commission **denied** all those requests in its D.02-04-002, issued April 4, 2002.
- Sierra Club protested Valencia’s Advice Letter (AL) 94 in January 2002, but the Commission allowed that advice letter as well as AL 95, both of which implemented D.01-11-048, to become effective.<sup>4</sup>

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<sup>4</sup> It was AL 95, which Sierra Club did **not** protest, that extended Valencia’s service area to include the planned West Creek real estate development – for which deficiencies in the Environmental Impact Review were the cause of the Commission’s eventual adoption of a partial stay of D.01-11-048. (See, D.03-10-063, slip op., at pp. 4-5.) The Commission’s decisions refer to ALs 88 and 90, which were the ALs by which Valencia originally proposed the relevant service area expansions. Water Division rejected those ALs pending the Commission’s decision in this proceeding. In compliance with D.01-11-048 and at the direction of Water Division, Valencia refiled what had been ALs 88 and 90 as ALs 94 and 95, respectively.

- Sierra Club filed its first petition for writ of review with the California Supreme Court in April 2002. The Court summarily **denied** review by its order of June 19, 2002.
- Sierra Club filed its first request for compensation in July 2002, a request the Commission largely granted by D.03-01-058, adopted January 30, 2003.
- Sierra Club made an ex parte submission of information about perchlorate contamination and later submitted comments in connection with its petition to modify D.01-11-048 in February 2003. The Commission summarily **denied** that petition by D.03-06-033, adopted June 5, 2003.
- Sierra Club made another ex parte submission of information about perchlorate contamination at the end of June 2003 and shortly thereafter filed an application for rehearing of D.03-06-033. The Commission, while staying D.01-11-048, in part, **denied** rehearing of its June decision by D.03-10-063, adopted October 16, 2003.
- Sierra Club filed its second petition for writ of review with the California Supreme Court in October 2003. The Court **denied** review by its order of December 23, 2003.

In sum, the results of two and one-half years of Sierra Club's efforts, from September 2001 through December 2003, are:

- Denial by the Commission of two applications for rehearing, one petition for modification, one advice letter protest, and assorted procedural motions;
- Summary denial by the California Supreme Court of two petitions for write of review;
- Award of intervenor compensation for contributions to a prior Commission decision; and

- Partial stay of the same decision to which the prior award of compensation pertained.

The details of Sierra Club's claims, as set forth at pages 8 through 12 of its request, and our determinations with regard to substantial contribution are discussed below.

**A. First Application for Rehearing Filed  
December 31, 2001 (Request p. 8)**

For its services during September through December 2001, Sierra Club requests compensation for 46.6 hours of attorney's time and related expenses for (1) its November 19, 2001 comments on the ALJ's draft decision that resulted in D.01-11-048; and (2) its December 31, 2001 Application for Rehearing, Request for Stay, and Request for Oral Argument.

We deny Sierra Club's request for compensation for its attorney's time for preparing comments on the ALJ's draft decision. Sierra Club offers no explanation why these costs were not included in its first compensation request filed on July 24, 2002, addressed in D.03-01-058 issued January 31, 2003. We will not allow Sierra Club to supplement its first compensation request at this late date. (See Section 1804(c) regarding timeliness of compensation requests.)

We also deny Sierra Club's request related to its December 31, 2001 application for rehearing of D.01-11-048. The Commission denied rehearing, stay, and oral argument in D.02-04-002. Therefore, there was no substantial contribution to a Commission decision.

**B. First Petition for Review by California  
Supreme Court (Request p. 9)**

For its services during January through April 2002, Sierra Club requests compensation for 18.2 hours of attorney's time and related expenses for its first petition for review filed on April 2, 2002 in the California Supreme Court. Sierra

Club states that in light of the lack of a response from the Commission within the 60-day period provided under Pub. Util. Code § 1733(b) to its December 31, 2001 application for rehearing of D.01-11-048, it was reasonable for Sierra Club to seek appellate review on the matters raised in its application for rehearing. The Commission, subsequently, in D.02-04-002, issued April 14, 2002, denied Sierra Club's application for rehearing. Also, the Supreme Court summarily declined review of Sierra Club's petition.

We deny Sierra Club's request because of lack of substantial contribution. Although we eventually stayed a small portion of D.01-11-048, the stay was taken on our own initiative; Sierra Club's petition for writ was not related or necessary for its contribution to D.01-11-048. We also reject Sierra Club's contention that its petition to the Supreme Court somehow assisted the Commission to issue its decision, or contributed to the Commission's decision.

**C. Preparation of First Request for Compensation (Request p. 10)**

For services during July through September 2002, Sierra Club requests compensation for (1) 7.3 hours attorney's time preparing its first compensation request filed July 24, 2002; and (2) 22.8 hours attorney's time plus related expenses in reviewing and responding to Valencia's opposition to Sierra Club's compensation request.

We deny the 7.3 hours of attorney time for preparation of the first compensation request because it should have been included in the first request. Sierra Club does not provide an explanation of why it was not included. The Supreme Court denied Sierra Club's first petition on June 19, 2002, over a month before Sierra Club filed its first compensation request. Sierra Club's request for



compensation for this item is untimely (see Section 1804(c)), and we find no justification for overlooking Sierra Club's noncompliance.

We will allow compensation for Sierra Club's time (22.8 hours) spent preparing its response to Valencia's opposition to the first compensation request because that time could not have been feasibly included in that compensation request; however, those hours will be reduced by 50% as required by the Commission with respect to preparation and justification of award requests. In sum, we allow compensation for 22.8 hours at half of the attorney's regular hourly rate (D.03-01-058 adopted \$250/hour), plus reasonable out-of-pocket expenses of \$105.93.

**D. Comments on ALJ's Proposed Decision  
Denying Petition for Modification of  
D.01-11-048 (Request p. 10)**

Sierra Club requests compensation for 12.2 hours of attorney's time and related expenses for its comments on the ALJ's draft decision on its petition for modification of D.01-11-048. We deny Sierra Club's request for compensation. There was no substantial contribution to the Commission's decision since Sierra Club's comments were not adopted in D.03-06-033, and its petition for modification was denied.

**E. Application for Rehearing of D.03-06-033  
(Request p. 11)**

Sierra Club requests compensation for 5.2 hours of attorney's time and related expenses in preparing its application for rehearing of D.03-06-033. Although we denied the application for rehearing, we find this work substantially contributed to D.03-10-063, insofar as the work assisted the Commission in deciding to stay the portion of D.01-11-048 relating to the West

Creek EIR. Accordingly, we allow compensation for attorney's time of 5.2 hours plus reasonable expenses of \$80.75.

**F. Second Petition for Review by California Supreme Court (Request p. 11)**

Sierra Club seeks compensation for 24.2 hours of attorney's time and related expenses preparing its second petition for review filed on October 6, 2003, in the California Supreme Court. As with its first petition for review, Sierra Club states that the petition was necessary because the Commission did not respond to its July 7, 2003 petition for rehearing of D.03-06-033 within the 60-day period provided under Pub. Util. Code § 1733(b). According to Sierra Club, following its petition and in apparent response thereto, on October 16, 2003, the Commission issued D.03-10-063, its Order Staying Decision 01-11-048 in Part and Denying Rehearing of Decision 03-06-033. Later, the Supreme Court summarily declined review of Sierra Club's petition.

As with the first petition for review, we deny Sierra Club's request for compensation because the petition is unrelated to and unnecessary for a substantial contribution to a Commission decision. Apart from the lack of the necessary connection between substantial contribution to the Commission proceeding and costs incurred in seeking judicial review, Sierra Club's request for those costs fails because the request is predicated on a misreading of Section 1733(b). The latter point is analyzed in our discussion below of the reasonableness of Sierra Club's requested compensation.

**VIII. Reasonableness of Requested Compensation**

Only reasonably incurred costs will be compensated. Even if the Commission determined that Sierra Club's work on its first petition was related to a substantial contribution to D.01-11-048, Sierra Club's request should be

denied because the work on its writ petition was unnecessary and thus the costs are unreasonable. Sierra Club did not wait for the Commission to issue its decision responding to Sierra Club's application for rehearing of D.01-11-048, which contained identical arguments to its first petition.

The Commission took more than 60 days to issue its order denying rehearing, but Section 1733(b) merely permits the rehearing applicant to deem it denied in that circumstance. The judicial review statute pertaining to Commission matters permits, but does not require, rehearing applicants to file in court within 60 days after filing an application for rehearing. Thus, Sierra Club was not required to file or lose its right to judicial review. Sierra Club's argument that its petition to the Supreme Court caused the Commission to issue its decision is completely without basis. Furthermore, Sierra Club admits that the rehearing decision "moot[ed] the need for review by the Supreme Court" (Second Request for Compensation, p. 4.) In short, we find that, even apart from Sierra Club's failure to establish the required nexus between its substantial contributions and its judicial review work, the work was avoidable and the related costs were unreasonable.

In the rest of this section of today's decision, we examine Sierra Club's claimed hours, rates, and costs related to those specific matters on which we earlier found that Sierra Club did make a substantial contribution.

#### **A. Hours Claimed**

Sierra Club provided a description of its services and expenditures. Sierra Club's corrected request is summarized below:

##### **Attorney's fees**

Stephan C. Volker  
and

Eileen Rice

121.45 hours x \$250/hour = \$30,362.50

**Other Costs**

Copying, postage, etc.

1,492.04

\$31,854.54

We found earlier that 22.8 hours of attorney's time for Sierra Club's first request for compensation, and 5.2 hours of attorney's time for its second application for rehearing, relate to substantial contributions in this proceeding. These hours appear reasonable in relation to the work product.

**B. Hourly Rates**

Sierra Club seeks compensation for both of its counsel at the hourly rate of \$250 per hour, in accordance with its Notice of Intent to Claim Compensation, which projected an hourly rate for counsel of \$250. As previously found reasonable in D.03-01-058 for attorney Stephan C. Volker, we approve the hourly rate of \$250 for his services.

Eileen M. Rice, an associate attorney, performed 10.5 of the hours in 2002 responding to Valencia's opposition of the first compensation request. The remaining hours (12.3) for preparation of the compensation request were spent by Volker. Rice completed law school in 1999 and has several years of litigation experience. We approve an hourly rate of \$200 for Rice for 2002 consistent with the rates we have adopted for other 1999 law school graduates (see D.03-04-011), but because all of her work was on compensation-related matters, we award compensation at half her hourly rate.

**C. Other Costs**

We have reviewed Sierra Club's summary of out-of-pocket expenses for postage and copying, and find the amounts related to the filings for which we award compensation reasonable given the scope of this proceeding. The total reasonable out-of-pocket expenses are \$186.68.

**D. Award**

As set forth in the table below, we award \$4,074.18.

<u>Attorney</u>	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Volker	2002	\$250	5.2	\$1,300.00
	2203			
Volker (compensation)	2002	\$125	12.3	\$1,537.50
Rice	2002	\$100	10.5	\$1,050.00
Total Attorney				\$3,887.50
Other Costs				\$ 186.68
Total Award				\$4,074.18

Consistent with previous Commission decisions, we will order Valencia to pay the award to Sierra Club plus any interest due (calculated at the three-month commercial paper rate), commencing May 8, 2004 (the 75<sup>th</sup> day after Sierra Club filed its compensation request) and continuing on the unpaid amount until full payment of the award.

As in all intervenor compensation decisions, we put Sierra Club on notice that the Commission staff may audit Sierra Club's records related to this award. Thus, Sierra Club must retain adequate accounting and other documentation to support its claim for intervenor compensation.

**IX. Comments on Draft Decision**

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment may be waived because this is an intervenor compensation decision. However, in this case, we mailed the draft decision of ALJ Patrick on July 20, 2004, for comments. No comments were received. No substantive change was

made to the ALJ's draft decision, but we have added discussion to provide further clarification.

## **X. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. Sierra Club has made a timely request for compensation.
2. Sierra Club has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding.
3. Sierra Club made a substantial contribution but only to the extent of the time it spent (1) responding to Valencia's opposition to its first request for compensation for which it was not compensated in D.03-01-058, and (2) preparing its second application for rehearing which assisted the Commission to stay the portion of D.01-11-048 relating to the West Creek EIR.
4. Sierra Club's efforts to obtain judicial review were not related to or necessary for its substantial contributions to this proceeding.
5. Sierra Club behaved unreasonably in seeking judicial review before the Commission had disposed of its applications for rehearing.
6. An intervenor's costs are compensable only to the extent that they are reasonable.

## **Conclusions of Law**

1. To the extent recognized in the foregoing opinion and findings of fact, Sierra Club has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. Sierra Club should be awarded \$4,074.18 for its contribution to D.03-10-063 and D.01-11-048, as discussed above.

3. Sierra Club's request for compensation, except as provided above, should be denied.

4. This order should be effective today so that Sierra Club may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Angeles Chapter of the Sierra Club (Sierra Club) is awarded \$4,074.18 in compensation for its substantial contribution to Decision (D.) 03-10-063 and D.01-11-048.

2. Valencia Water Company (Valencia) shall pay Sierra Club \$4,074.18 within 30 days of the effective date of this order. Valencia shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning May 8, 2004, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated February 10, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
Commissioners

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0502003
<b>Contribution Decision(s):</b>	D0111048
<b>Proceeding(s):</b>	A9912025
<b>Author:</b>	ALJ Patrick
<b>Payer(s):</b>	Valencia Water Company

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Sierra Club	2/23/04	\$31,854.54	\$4,074.18	No	Failure to make substantial contribution; failure to justify hourly rate

## Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Stephen	Volker	Attorney	Sierra Club	\$250	2000-2003	\$250
Eileen M.	Rice	Attorney	Sierra Club	\$250	2002	\$200